

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company)

1-800 Reconex, Inc. et. al)

Complaint Pursuant to Section 10-108 of)

The Illinois Public Utilities Act 220 ILCS)

5/10-108 and 83 Illinois Administrative)

Code 200.170)

Docket No. 04-0606

SERVED ELECTRONICALLY

ANSWER AND AFFIRMATIVE DEFENSES OF WITEL

COMMUNICATIONS, LLC

WilTel Communications, LLC ("WilTel") respectfully submits this answer and these affirmative defenses to the Amended Complaint filed by Illinois Bell Telephone Company ("SBC").

1. No answer required.
2. Admits with respect to WilTel.
3. Admits. WilTel is willing to accept service by electronic means in this matter.

Introduction and Summary

4. Admits that SBC purports to file the Amended Complaint pursuant to the PUA and requests the Commission to exercise its general supervisory authority. Otherwise, denies the allegations.
5. Denies that the Amended Complaint is necessary to ensure the interconnection agreements conform to governing law.

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6. Denies.
7. Denies.
8. Denies, except WilTel admits it has an interconnection agreement with SBC that includes terms that relate to certain unbundled elements for which FCC regulations have been modified by subsequent FCC orders or by court decisions. The effect of those FCC orders and court decisions is subject to considerable debate. To the extent SBC alleges conclusions of law, WilTel denies these allegations.
9. Denies.
10. Admits that the parties have not agreed to execute any contract amendments related to the FCC's *Triennial Review Order*. However, until Respondents received the complaint, SBC Illinois had never provided Respondents with the amendment attached to the Amended Complaint as Exhibit B. WilTel stands ready to negotiate such amendment.
11. Denies.

Federal Unbundling Requirements

12. Admits.
13. Denies.
14. Refers the Commission to the documents.
15. Admits that *USTA I* vacated and remanded the referenced orders and that the FCC signaled its intent to develop new rules. With respect to the other allegations, WilTel expresses no opinion.

16. Admits that the new rules were released on August 21, 2003, and took effect on October 2, 2003. Admits that the FCC indicated it expected carriers to update their agreements to incorporate the new rules, however, the *Order* speaks for itself.

17. Admits that *USTA II* upheld certain provisions of the FCC's order but disputes SBC's allegation as to which were upheld. Admits that the D. C. Circuit found that the FCC had failed to justify its rules requiring unbundled switching and high-capacity dedicated transport and that it vacated those rules. Denies that *USTA II* held that the FCC failed to justify its rules requiring high-capacity loops and vacated those rules.

18. Admits.

19. Admits that the FCC *Interim Order & NPRM*, issued August 20, 2004, instituted a remand proceeding to create new rules to replace the rules that were vacated, and that any new rules adopted by the FCC could impact existing and new interconnection agreements.

19. A. Admit.

19. B. WilTel denies that *USTA II* vacated the FCC's unbundling rules for high-capacity loops. WilTel admits that the *Order* contains certain "stand-still" requirements that require ILECs to make available certain UNEs.

19. C. WilTel admits the FCC "expressly preserve[d] incumbent ILECs contractual prerogatives". WilTel denies all the other allegations.

20. Denies.

21. Admits that the *Interim Order and NPRM* find that "wasteful" litigation is to be avoided. Denies that the FCC directed state commissions to act. As to other assertions in this lengthy paragraph, the FCC *Order* speaks for itself.

22. Admits that the *Order* indicates that parties could initiate change of law proceedings but denies the FCC stated they “should” or “will.” As to other assertions, the *Order* speaks for itself.

The CLEC Parties’ Interconnection Agreements

23. Admits “unbundling law has seen rapid change in recent years.” Denies that its existing interconnection agreement does not comply with the current federal law.

24. Admits that SBC Illinois provided written notice of the need to update the parties’ interconnection agreements after the *Triennial Review Order*. Otherwise, denies the allegations.

25. WilTel does not have sufficient information to admit or deny these allegations and WilTel requests strict proof of this allegation.

26. WilTel does not have sufficient information to admit or deny these allegations and WilTel requests strict proof of these allegations.

The Commission’s Assistance

27. Denies that Commission intervention is necessary to conform its existing agreement to federal law. It is WilTel’s position that the *Order* speaks for itself

28. Denies. Where SBC discusses its opinion of what the *Order* says or requires, the *Order* speaks for itself.

29. Denies. No response necessary for first sentence.

Relief Requested by SBC

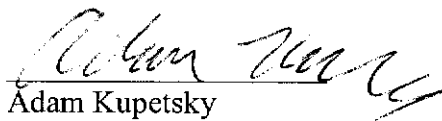
30. No response required.

All SBC Illinois allegations are denied except to the extent explicitly admitted in paragraphs 1-30 above.

AFFIRMATIVE DEFENSES

1. Complainant fails to state a cause of action for which relief can be granted.
2. Complainant's basis for relief regarding WilTel is not correct.
3. Complainant has failed to plead necessary prerequisite facts to bring a complaint against WilTel under its interconnection agreement with WilTel.
4. Complainant fails to comply with the procedural requirements of Section 252 of the Federal Telecommunications Act.
5. The Complainant's requested relief (imposition on WilTel of SBC's interconnection agreement amendment) is contrary to the Federal Telecommunications Act.

Respectfully Submitted,


Adam Kupetsky

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November 12, 2004

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

VERIFICATION

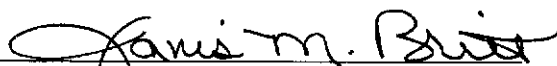
Adam Kupetsky, being first duly sworn, deposes and states that he is an attorney representing WiTel Communications, LLC, that he has read the foregoing Answer and Affirmative Defenses in Docket 04-0606 and knows the contents thereof, and that the statements therein contained are true, to the best of his knowledge, information and belief.



Adam Kupetsky

Dated: 11/12/04

SUBSCRIBED AND SWORN to
before me this Nov. 12, 2004

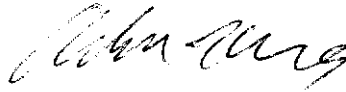

Notary Public

My Commission expires on _____



CERTIFICATE OF SERVICE

I, Adam Kupetsky, hereby certify that I have, on this 12th day of November 2004 caused to be served upon the following individuals, by e-mail or US mail, a copy of the foregoing Answer and Affirmative Defenses on behalf of WilTel in Docket 04-0606.

A handwritten signature in black ink, appearing to read 'Adam Kupetsky', written in a cursive style.

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